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**CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI**

**ORIGINAL APPLICATION No.20/2013**

**Date of Decision: 18<sup>th</sup> June, 2019**

**CORAM: Dr.Bhagwan Sahai, Member (A)  
R.N. Singh, Member (J)**

Shri Onkar Laxman Ghanellu  
s/o Laxman Naganna Ghanellu,  
Age-24 years,  
Date of Birth 13.11.1989,  
Worked as : Ex-Platter,  
Ticket No.14811 R,  
Of Naval Armament Depot, Karanja.  
Resding at-208/2657, Sector-6,  
C.G.S. Colony, Kane Nagar,  
Antop Hill, Mumbai-400037.

...Applicant.

**(By Applicant Advocate: Shri S.V. Marne).**

**Versus.**

1. The Union of India, through,  
Secretary, Ministry of Defence,  
South Block New Delhi 110001.
2. The Chief of Naval Staff,  
Integrated Headquarters  
Ministry of Defence (N)  
New Delhi-110011.
3. The Flag Officer Commanding-in-Chief  
Headquarter Western Naval Command,  
Mumbai-400001.
4. The Chief General Manager,  
Naval Armament Depot,  
Bhagat Singh Road,  
Behind Town Hall,  
Gun Gate, Mumbai 400023.

... Respondents.

**(Respondents by Advocate Shri N.K. Rajpurohit ).**



Reserved on : 15.03.2019.

Pronounced on : 18.06.2019.

ORDER

Per:- R.N. Singh Member (J)

This OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"(a). The Hon'ble Tribunal after examining the proceedings in the present case declare the order dated 10.12.10, 19.04.11 and 06.10.11 as illegal and same may be quashed and set aside.

(b). The Hon'ble Tribunal may graciously please to direct the respondents to decide his Review Petition dated 27.03.2012, which is pending since last seven months within a reasonable period.

(c) Any other and further order as this Hon'ble tribunal may deem fit in the nature and circumstances of the case be passed."

2. The facts of the case as contended by the applicant are that he was initially appointed as Platter Ticket No.4811 of Naval Armament Depot, Karanja on 02.03.2009. On 23.07.2009 he carried his bag containing Tiffin Box, 6 Whim Soapbars 250 grams each and an Umbrella. It is stated that his bag was lying in the Fabrication Section from 10 a.m. to 5.00 p.m. On the same day he alongwith his other colleagues were working in



the Welding shop Division. It is stated that while leaving from duty he gave his bag to checking at the checking post wherein they disclosed some brass material in the Tiffin Box. A Memorandum dated 27.08.2009 (Annex A-4) was issued for his misconduct or misbehavior. As per the charge Memo following charges were leveled against the applicant:-

" **Article-I**

*Shri OL Ghanellu, T.No.14811R of NAD, Karanja while functioning as Platerat Naval Armament Depot, Karanja was caught red-handed in possession of 2.4 Kg Brass scrap, at JCO Main gate, NAD, Karanja during routine search of his personal baggage by the Duty DSC Staff. Thus Shri OL Ghanellu, attempted to commit theft of Govt. property exhibiting conduct unbecoming of a Govt. servant and lack of devotion to duty, thus violated Rule 3(1)(ii)&(iii) of CCS (Conduct) Rules, 1964."*

3. The applicant denied the charges vide his representation dated 19.09.2009 (Annex A-5). Thereafter, an inquiry was conducted and an order of removal from service dated 10.12.2010 (Annex A-1) was issued upon the applicant. He submitted an appeal on 11.12.2010 (Annex A-6) which was rejected on 19.04.2011 by the respondents. Thereafter, he preferred a Revision Petition on 16.06.2011 (Annex A-7) which was also rejected



vide order dated 06.10.2011 (Annex A-3). The applicant thereafter submitted a Review Petition on 27.03.2012 (Annex A-8) to the Hon'ble President of India which is still pending for disposal.

4. It is stated that Respondents have not followed the Rules 14,17,18,19 & 20 of the CCS (CCA) Rules, 1965. As such orders of the Disciplinary, Appellate and Revision Authorities are illegal and are liable to be quashed and set aside and the applicant is entitled for reinstatement in service from the date of removal with all consequential benefits.

5. His Review Petition is still pending and he has also submitted a reminder dated 15.10.2012 (Annex A-11). By amendment the applicant informed that order of Hon'ble President of India rejecting his review petition was served upon him 20.06.2013 when his Advocate requested for the same. The respondents have made averments in the reply that his review petition has been rejected by the Hon'ble President of India vide order dated 08.04.2013 (Annexure A-11 (A)). Hence this OA.



6. Opposing the claim of the applicant, the respondents have filed reply. They have not disputed the basic facts stated by the applicant. They have contended that the present OA has been filed challenging the orders dated 10.12.2010, 19.04.2011 and 06.10.2011 issued by the Respondent Authorities. It is stated that the applicant was appointed as Platter (T.No.14811 R) w.e.f. 02.03.2009 and was on probation period of one year upto 01.03.2010. It is submitted that personal baggage of all the employees are checked at the main gate during closing hours by the DSC of Naval Armament Depot, Karanja and while checking the baggage of the applicant it was found that the applicant was carrying 2.4 Kg Brass Scrap in his Tiffin Box.

7. An inquiry was conducted after following due process and after giving full opportunity to the applicant and his Defence Assistant. Finally, the inquiry report was handed over to the applicant on 11.08.2010. Thereafter, the applicant submitted his defence which was rejected by the competent authority after considering all the facts and circumstances of the case. It is further contended that the



applicant was given all opportunity to plead his case and prove his innocence but he could not produce any material evidence or witnesses. No procedural illegalities were committed by order of "Removal from Service" passed by the Disciplinary Authority.

8. The applicant has filed Rejoinder denying and disputing the averments made by the respondents in their Reply and reiterating the averments made in his OA.

9. The respondents have also filed Sur-Rejoinder stating therein that the Applicant in a self written statement has admitted that some brass items were found in his Tiffin box during security check. The applicant's contention that Inquiry Officer has not followed the procedure properly and remained mute spectator is without any evidence and needs to be rejected. The applicant and his Defence Assistant were asked to give names of defence witnesses during the hearing conducted on 20.11.2009 and 08.12.2009 and both stated that the names of the defence witnesses would be intimated as required. The Inquiry Officer has conducted the proceedings in



a fair manner by listening to the arguments put forward by both the sides.

10. The applicant's allegation that there was violation of rules during the proceedings is an attempt to divert attention of the Hon'ble Court from the core charges against him. The impugned order dated 08.04.2013 is absolutely legal and as per the principles of natural justice and the applicant has availed of every opportunity to defend his case at the time of departmental enquiry. As such the OA filed by the applicant is liable to be dismissed.

11. Moreover, the applicant was on probation and thus his service could have been terminated without an inquiry. A criminal case could have been filed against him but the Disciplinary Authority has taken a sympathetic view and no criminal case was filed against him and the proceedings were initiated under CCA (CCS) Rules, 1965, providing him all the possible opportunities to defend his case. Therefore, the allegation of the applicant is not at all maintainable.

12. We have gone through the O.A. along with Annex A-1 to A-11 (A) and Reply of the



respondents along with Annex R-1 to R-3, Rejoinder and Sur-Rejoinder filed on behalf of the respondents along with Annex R-4.

13. We have heard the learned counsel for the applicant and the learned counsel for the respondents and carefully considered the facts and circumstances, law points and rival contentions in the case.

### **Findings**

14. The Applicant was initially appointed as Platter in Naval Armament Depot, Karanja on 2.03.2009. While leaving office on 23.07.2009 from duty he gave his bag for checking at the checking post, when they disclosed some brass material in the Tiffin Box and this fact has been admitted by him in his own writing. A Memorandum dated 27.08.2009 (Annex A-4) was issued for his misconduct or misbehavior. He denied the charges vide his representation dated 19.09.2009. Thereafter, an inquiry was conducted, he was supplied a copy of Inquiry Report. His defence statement was considered and an order of removal from service dated 10.12.2010 (Annex A-1) was issued upon the applicant.



15. The applicant submitted an appeal on 11.12.2010, which was rejected on 19.04.2011 by the respondents. Thereafter, he preferred a Revision Petition on 16.06.2011, which was also rejected vide order dated 06.10.2011. The applicant thereafter submitted a Review Petition on 27.03.2012 to the Hon'ble President of India, which was disposed of and order was served upon the applicant on 20.06.2013. Though, it has been contended on behalf of the applicant that Respondents have not followed the Rules 14,17,18,19 & 20 of the CCS (CCA) Rules, 1965 as such orders of the Disciplinary, Appellate and Revision Authorities are illegal and are liable to be quashed and set aside and the applicant is entitled for reinstatement in service from the date of removal with all consequential benefits. However, how the respondents have violated provisions of such Rules has not been mentioned by him.

16. The applicant during checking was found carrying 2.4 Kg Brass Scrap in his Tiffin Box and he has admitted this fact. The applicant was given all opportunities to plead his case and prove his innocence but he could not produce any



material evidences or witnesses. There are no procedural illegalities committed by order of "Removal from Service" by the Disciplinary Authority and the higher authorities while considering his appeal or review against such order.

17. The Hon'ble Apex Court in the case of **Union of India Vs. G. Annadurai 2009 (13) SCC 469** has observed that if an employee fails to participate in the inquiry, despite sufficient opportunity, the decision so taken is not bad in the eyes of law and it does not require any interference. It has been further observed as under:-

*"5. Thereafter, in course of the enquiry, statements of four witnesses were recorded and several documents were proved. Copies of the statements of the witnesses examined and documents exhibited were sent to the respondent by registered post asking him to submit his written statement for defence or appear before the enquiry officer. This was done on 6.3.1998. Again there was no compliance with the order. Enquiry was concluded and it was held that the charges were proved.*

18. The Hon'ble Apex Court in the case of **State of Bikaner Vs. Nami Chand Nalwa reported in 2011 (4) SCC, 584**, regarding the scope of judicial review in functioning of disciplinary authority has observed as under:-



"7. When a court is considering whether punishment of termination from service' imposed upon a bank employee is shockingly excessive or disproportionate to the gravity of the proved misconduct, the loss of confidence in the employee will be an important and relevant factor. When an unknown person comes to the bank and claims to be the account-holder of a long inoperative account, and a bank employee, who does not know such person, instructs his colleague to transfer the account from "dormant" to "operative" category (contrary to instructions regulating dormant accounts) without any kind of verification, and accepts the money withdrawal form from such person, gets a token and collects the amount on behalf of such person for the purpose of handing it over to such person, he in effect enables such unknown person to withdraw the amount contrary to the banking procedures; and ultimately, if it transpires that the person who claimed to be account holder was an imposter, the bank cannot be found fault with if it says that it has lost confidence in the employee concerned. A Bank is justified in contending that not only employees who are dishonest, but those who are guilty of gross negligence, are not fit to continue in its service.

19. The Hon'ble Apex Court in the case of B.C. Chaturvedi vs. U.O.I. & ors. Reported in 1995 (6) SCC 749 has observed that "in the scope of judicial review in disciplinary proceedings, the Court are not competent and cannot appreciate the evidence."



20. The Hon'ble Apex Court in the case of **Union of India v. Upendra Singh** reported in (1994) 3 SCC 357 has observed that the scope of judicial review in disciplinary enquiry is very limited, as under:-

"In the case of charges framed in a disciplinary inquiry the Tribunal or Court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be."

21. The Hon'ble Apex Court in the case of **Union of India Vs. Sardar Pahadur** reported in 1972 4 SCC-618 is as under:

"A disciplinary proceeding is not a criminal trial. The standard proof required is that of preponderance of probability and not proof beyond reasonable doubt. If the inference that lender was a person likely to have official dealings with the respondent was one which a reasonable person



would draw from the proved facts of the case, the High Court cannot sit as a court of appeal over a decision based on it. The Letters Patent Bench had the same power of dealing with all questions, either of fact or of law arising in the appeal, as the Single Judge of the High Court. If the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court. A finding cannot be characterized as perverse or unsupported by any relevant materials, if it was a reasonable inference from proved facts."

22. As the applicant was given full opportunity to participate in the inquiry and after due inquiry, the disciplinary authority came to the conclusion that the applicant committed misconduct or misbehaviour, and the same has been affirmed by the Appellate as well as reviewing Authority as such, keeping in view the law laid down by the Hon'ble Apex Court in catena of cases, a few of which have been referred above, we do not find any reason to interfere with the impugned order in present O.A.

23. Accordingly, O.A. is dismissed. No costs.

(R.N. Singh)  
Member (J)

(Dr. Bhagwan Sahai)  
Member (A)

Amit/-

JD  
26/6/19



